



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF I-C-C-, INC.

DATE: AUG. 25, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner is a company that employs more than 60 physicians. It seeks classification for the Beneficiary as an individual of exceptional ability in the sciences. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). This second preference classification makes immigrant visas available to foreign nationals with a degree of expertise significantly above that normally encountered in the sciences, arts, or business.

The Director, Texas Service Center, denied the petition, finding that the Petitioner did not establish that the Beneficiary qualifies under the U.S. Department of Labor Schedule A, Group II designation for exceptional ability. Specifically, it met only one criterion listed at 20 C.F.R. § 656.15(d)(1)(i)-(vii), when evidence satisfying at least two criteria is required. The Director also found the Petitioner did not demonstrate that the Beneficiary's position for the past year, and the position for which his services are sought, both require someone of exceptional ability. Lastly, the Director concluded that the Petitioner did not establish its ability to pay the proffered wage.

The matter is now before us on appeal. The Petitioner submits additional evidence and a brief alleging that the Director erred in concluding that it did not provide the necessary evidence to meet at least two regulatory criteria listed at 20 C.F.R. § 656.15(d)(1)(i)-(vii). It also provides additional documentation regarding its ability to pay.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Second preference immigrant visas are available for qualified individuals who are advanced-degree professionals or who, because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2) of the Act. Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2).

Every petition under this classification must include one of the following three documents: (1) an individual labor certification from the Department of Labor, (2) an application for Schedule A

designation, or (3) documentation to establish that the beneficiary qualifies for one of the shortage occupations in the Department of Labor's Labor Market Information Pilot Program. 8 C.F.R. § 204.5(k)(4)(i).

Schedule A Group II designation requires that a petitioner submit evidence of the beneficiary's exceptional ability in the sciences or arts as demonstrated by widespread acclaim and international recognition from recognized experts in the field. 20 C.F.R. § 656.15(d)(1). In addition, the petitioner must provide evidence meeting at least two of the following seven criteria:

- (i) Documentation of the alien's receipt of internationally recognized prizes or awards for excellence in the field for which certification is sought;
- (ii) Documentation of the alien's membership in international associations, in the field for which certification is sought, which require outstanding achievement of their members, as judged by recognized international experts in their disciplines or fields;
- (iii) Published material in professional publications about the alien, about the alien's work in the field for which certification is sought, which shall include the title, date, and author of such published material;
- (iv) Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which certification is sought;
- (v) Evidence of the alien's original scientific or scholarly research contributions of major significance in the field for which certification is sought;
- (vi) Evidence of the alien's authorship of published scientific or scholarly articles in the field for which certification is sought, in international professional journals or professional journals with an international circulation; [and]
- (vii) Evidence of the display of the alien's work, in the field for which certification is sought, at artistic exhibitions in more than one country.

Id. In addition to meeting two of these criteria, the documentation presented must show that the beneficiary worked for the past year in a position that requires an individual of exceptional ability and that the beneficiary's services are sought for a position that requires an individual of exceptional ability. *Id.* As with any filing for an employment-based immigrant that requires an offer of employment, this petition must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. 8 C.F.R. § 204.5(g)(2).

II. ANALYSIS

The Petitioner describes itself as the [REDACTED] physicians in the United States. Its mission is “to improve the quality of care for critically ill patients in the ICU [Intensive Care Unit].” The Petitioner seeks to employ the Beneficiary as a physician in [REDACTED] Florida. Requirements for the job listed on the submitted ETA Form 9089 (labor certification) are: “a fellowship in critical care, Board Certification in critical care, 24 months combined experience in pulmonary and critical care, at least one year of a critical care residency, and a Florida medical license.” The Petitioner indicated it will pay the Beneficiary the prevailing wage.

A. Schedule A, Group II qualification

The Director found that, although the Petitioner demonstrated he is an advanced degree professional, he did not satisfy the requirements of 8 C.F.R. § 204.5(k)(4)(i) in that his application for Schedule A, Group II designation did not meet the necessary qualifications. Specifically, the Director found that the Petitioner did not provide documentation showing that the Beneficiary’s work in the field during the past year did, and his intended work in the United States will, require exceptional ability. In addition, he stated that the Petitioner did not submit evidence described in at least two groups listed at 20 C.F.R. § 656.15(d)(1)(i)-(vii).

1. Positions requiring an individual of exceptional ability

To qualify for Schedule A, Group II designation, a petitioner must provide documentation showing that the beneficiary worked for the past year in a position that requires an individual of exceptional ability, and that the beneficiary’s services are sought for a position that requires an individual of exceptional ability. 20 CFR 656.15(d)(1). The Director stated in the denial that the Petitioner had not met either of these requirements. On appeal, the Petitioner does not address these grounds. Upon review of the record in its totality, we agree with the Director’s determination.

The Petitioner filed the instant petition on June 25, 2013. The Beneficiary’s *curriculum vitae* that the Petitioner provides on appeal states that the Beneficiary has worked as the president of the [REDACTED] since June of 2012. On the labor certification submitted with the initial filing, the Petitioner does not list the position of president with the [REDACTED] under the section for the Beneficiary’s work experience. The only position listed in this section is the position of faculty at the [REDACTED] which the labor certification states he held from April 2010 to an unknown date. Despite the lack of end date on the labor certification, the Beneficiary’s *curriculum vitae* states that he held this position at the [REDACTED] only until March of 2011. In addition to these apparent inconsistencies regarding what the Beneficiary did the year prior to the petition’s filing, the Petitioner has not demonstrated that the job required an individual of exceptional ability. As noted above, exceptional ability is defined as “a degree of expertise significantly above that ordinarily encountered.” 8 C.F.R. § 204.5(k)(2). The Petitioner does not articulate the specifics of the

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Beneficiary's position at the [REDACTED] that required an individual with such expertise. Without more, the Petitioner has not met this regulatory requirement.

In addition, the regulation requires that the Petitioner show that the position for which the Beneficiary's services are sought requires an individual of exceptional ability. The Petitioner seeks to hire the Beneficiary as a physician. It will pay him the prevailing wage of \$169,395 in annual salary. The labor certification indicates that a medical degree is required for the position, and that 24 months of training in pulmonary and critical care is required. In addition, the position requires 12 months of experience. As the position is for an intensive care physician, the Petitioner further requires a fellowship in critical care and board certification in critical care. Lastly, it states that applicants must possess a United States medical license and a Florida specific license. As noted above, the Petitioner does not address this ground for denial and does not provide rationale for finding that the position requires an individual of exceptional ability. The Petitioner does not provide information regarding the average experience in the field for comparison. Without more, we cannot conclude that the position for which the Beneficiary's services are sought requires an individual of exceptional ability.

2. Evidentiary criteria

Schedule A, Group II designation also requires that the Petitioner must submit evidence described in at least two of the evidentiary groups listed at 20 C.F.R. § 656.15(d)(1)(i)-(vii). The Director found that the Petitioner satisfied only the criterion requiring authorship of published scientific articles in the field in professional journals with an international circulation. 20 C.F.R. § 656.15(d)(1)(v). A review of the evidence submitted supports this finding and shows the Beneficiary authored five articles published in scholarly journals with international circulation such as [REDACTED]. On appeal, the Petitioner states it has also provided evidence that meets the following two criteria:

Documentation of the alien's receipt of internationally recognized prizes or awards for excellence in the field for which certification is sought.

The Petitioner provided evidence that the Beneficiary received a [REDACTED] issued by the [REDACTED]. The award certificate states that the Beneficiary "has fulfilled the requirements for the [REDACTED] in [REDACTED] VALID August 01, 2010 – August 01, 2011." The Director found the [REDACTED] did not satisfy this criterion because the Petitioner did not establish that it is internationally recognized or awarded for excellence in the field.

On appeal, the Petitioner notes that the [REDACTED] has international members and concludes: "[t]he averment is self-evident that the award is internationally recognized." We disagree with the Petitioner's conclusion. This criterion requires evidence that the award received is internationally recognized for excellence in the field. Although the Petitioner indicates that the [REDACTED] has international members, it does not provide documentation to corroborate this statement. More

importantly, however, the possibility for international physicians to join the [REDACTED] does not mean that any award given by the [REDACTED] is internationally recognized. In this case, the Petitioner has not provided documentation regarding the recognition afforded the [REDACTED]. In addition, the Petitioner did not submit information or explanation regarding the reasons for which the [REDACTED] is given.¹ Without more, the Petitioner has not established either that the award is internationally recognized, or that it is recognized for excellence in the field for which certification is sought.

The Petitioner also states on appeal that he received a fellowship award in the [REDACTED]. The evidence in the record does not support the assertion that the Petitioner received an award from [REDACTED]. Instead, the documentation shows that the Petitioner was elected to be a fellow of the [REDACTED]. The welcome letter addressed to him states: "This certification recognizes you as a chest medicine specialist who has met the educational and professional requirements for [f]ellowship." Merriam-Webster's dictionary states that "fellow" may be defined as "a member of a group having common characteristics; specifically: a member of an incorporated literary or scientific society."² The evidence demonstrates the Petitioner's membership in this organization, but does not suggest that such membership is akin to an award. The Petitioner indicates that [REDACTED] has members in over 100 countries. As noted above, foreign members are not synonymous with international recognition for excellence in the field. In addition, the record does not contain details regarding the educational and professional requirements for fellowship in [REDACTED] and therefore does not establish that excellence in the field of endeavor is the reason that fellowship is granted. For all of these reasons, evidence that the Petitioner is a fellow of the [REDACTED] does not meet the requirements of this criterion.

Lastly, the Petitioner notes that he was awarded a certificate as a clinical fellow from the [REDACTED]. Again, the Petitioner emphasizes that this program accepts foreign medical students. The international recognition required for this criterion relates to the acclaim and regard of the institution. Although the acceptance of foreign students may contribute to international recognition, it does not necessarily result in the broad acclaim required for "international recognition." Moreover, as discussed previously, the Petitioner submitted no documentation to show that a certificate acknowledging the Beneficiary's position as a clinical fellow is an award. Instead, it is an indication of a job he held. The Petitioner does not provide any evidence regarding his position as a clinical fellow to suggest that serving in the position should be considered an award for excellence in the field. As a result, the certificate does not satisfy this criterion.

¹ We note that the [REDACTED] website indicates that the award is given to licensed physicians who have completed 50 hours of continuing medical education in a given year. See *How can I earn the [REDACTED]*

(last visited Aug. 23, 2016).

² See search: fellow, Merriam-Webster Dictionary, <http://www.merriam-webster.com/dictionary/fellow> (last visited Aug. 23, 2016).

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Evidence of the alien's original scientific or scholarly research contributions of major significance in the field for which certification is sought.

To satisfy this criterion, the Petitioner must provide evidence of the Beneficiary's original research contributions.³ In addition, it must show that these contributions are of major significance in the field. The Petitioner provided evidence that the Beneficiary has published five research articles in scholarly journals. We find that these articles represent original research contributions that are both scientific and scholarly in nature. The Petitioner has not demonstrated, however, that the articles represent contributions of major significance in the field.

To meet this criterion, an individual's contributions must be both original and of major significance in the field. Regardless of the field, the phrase "contributions of major significance in the field" requires substantiated impacts beyond one's collaborators, employer, clients, or customers. In addition, it is insufficient to document one's potential influence; rather, the criterion requires a showing that an individual's scientific findings have already significantly impacted the field.

To demonstrate the significance of his contributions, the Petitioner provided a number of letters of support.⁴ [REDACTED] a researcher at [REDACTED] noted the Beneficiary's findings published in [REDACTED] relating to the positive effect of magnesium supplements on heart failure patients. [REDACTED] stated: "These findings are significant and if independently validated may change the standard treatment many physicians provide patients with congestive heart failure." The article cited by [REDACTED] was published in 2006 and [REDACTED] reports that it has since had 20 citations. The article is approximately ten years old, but the record contains no evidence showing that the Beneficiary's results have been replicated. As previously noted, to satisfy this criterion, the Petitioner must demonstrate more than the potential influence of contributions. In this case, however, [REDACTED] does not provide examples of the actual impact of the Beneficiary's findings, despite nearly 10 years since their publication.

[REDACTED] a professor of critical care medicine and surgery at the [REDACTED] discussed the Petitioner's finding that, "although infrequent, major complications do occur during arterial catheterization." He then concluded that, "[t]o minimize the risk of major complications to the patient, arterial catheterization therefore should only be used when absolutely necessary and it should be used for the shortest duration possible." [REDACTED] noted that the Beneficiary's discovery has influenced his own behavior and likely that of many other physicians. He states: "I am sure that many of the physicians who have implemented [the Beneficiary's] research in their clinical practice have already lowered medical costs to Medicare/Medicaid covered patients, thus providing an economic benefit to taxpayers nationwide." The record does not, however, contain documentation to support these claimed benefits. For example, the Petitioner did not provide evidence showing that these changes have been implemented on a regional or

³ On appeal the Petitioner argues that contributions need to be original only if they are scientific, and not scholarly. We disagree. The Petitioner must provide evidence of the Beneficiary's original research contributions, which may be either scientific or scholarly in nature.

⁴ Although only selected letters are discussed, all were thoroughly reviewed and considered.

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institutional level. Similarly, it does not provide corroboration to support the assertion of lowered medical costs. USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). Without details to explain the stated impact of the Beneficiary's work, the Petitioner has not met the burden of proof in these proceedings.

The Petitioner also provided a letter from [REDACTED] Associate Professor at [REDACTED] [REDACTED] emphasized the Beneficiary's research and noted that he has published it in journals and presented it at conferences. While laudable, these achievements are the mark of a successful researcher. [REDACTED] did not articulate, however, how the Beneficiary's publications and presentations have had a significant impact on the field. Similarly, [REDACTED] described the Beneficiary's roles as an instructor and the author of a book chapter. However, he did not explain how serving in these positions resulted in the claimed significance in the field of medicine and more specifically, intensive care. Demonstrating that the Beneficiary served as an instructor and author is not sufficient to demonstrate the impact required. For these reasons, the Petitioner has not satisfied this criterion.

B. Ability to pay the proffered wage

Also at issue in this case is whether the Petitioner has established the ability to pay the proffered wage. The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by the Service.

On appeal, the Petitioner submits a letter dated November 17, 2014, from a human resources employee indicating that it has employed the Beneficiary as an intensivist physician since November 14, 2013, with an annual salary of \$260,000 per year. It also provided the Beneficiary's 2013 W-2 statement indicating that it paid him \$20,625.00 that year. Although the regulation indicates that a statement from a financial officer may be acceptable if the employer employs 100 or more workers, the Petitioner has not shown that it meets this requirement. As a result, the letter from human resources regarding the Petitioner's intention to pay the Beneficiary \$260,000 is not sufficient to demonstrate its ability to pay the proffered wage.

To demonstrate its net income, the Petitioner provides its “consolidated 2013 P&L” statement. However, reliance on unaudited financial documents is misplaced. The regulation at 8 C.F.R. § 204.5(g)(2) makes clear that where a petitioner relies on financial statements to demonstrate its ability to pay the proffered wage, those financial statements must be audited. As there is no accountant’s report accompanying the submitted reports, we cannot conclude that it is an audited statement. Unaudited financial statements are the representations of management. The unsupported representations of management are not reliable evidence and are insufficient to demonstrate the ability to pay the proffered wage.

In the instant case, the record does not include the Petitioner’s 2014 or 2015 federal tax return, an audited financial statement, or an annual report as required by 8 C.F.R. § 204.5(g)(2). While we may consider other factors, nothing exempts the Petitioner from submitting evidence required by regulation. *Cf. Matter of Sonegawa*, 12 I&N Dec. 612 (Reg’l Comm’r 1967). The evidence submitted does not establish that the Petitioner had the continuing ability to pay the proffered wage beginning on the priority date.

III. CONCLUSION

We will dismiss the appeal for the above-stated reasons, with each considered an independent and alternate basis for the decision. It is the Petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act. Here, it has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of I-C-C-, Inc.*, ID# 17571 (AAO Aug. 25, 2016)